

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HERAND ABCARIAN, M.D., F.A.C.S., Plaintiff,)	
)	
v.)	
)	
TIMOTHY MCDONALD, M.D., J.D., PATRICIA)	Case No. 08 CV 3843
KALE, WILLIAM H. CHAMBERLIN, JR., M.D.,)	
NIKKI CENTOMANI, STUART ALLEN,)	Honorable Samuel Der-Yeghiayan
BARBARA MCCOLGIN, CHRIS J. MOLLET, ESQ.,)	
THOMAS R. BEARROWS, ESQ., CHRISTINE)	
FLANINGAM, MICHAEL TRUCCO, ESQ., and)	
THE BOARD OF TRUSTEES OF THE)	
UNIVERSITY OF ILLINOIS, Defendants.)	

U OF I DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Defendants Timothy McDonald, Patricia Kale, William Chamberlin, Nikki Centomani, Stuart Allen, Barbara McColgin, Chris Mollet, Thomas Bearrows, Christine Flaningam, and the Board of Trustees of the University of Illinois (collectively, the “U of I Defendants”) move to dismiss the Complaint filed by Plaintiff Herand Abcarian.¹ In support thereof, the U of I Defendants submit the attached Memorandum and state as follows:

1. On July 7, 2008, Abcarian filed a 47-page complaint against the Board of Trustees of the University of Illinois, various University employees, and its outside counsel in connection with the Board’s settlement of a wrongful death/medical malpractice claim against Abcarian and subsequent reporting of that settlement to state and federal regulatory authorities. Abcarian’s complaint includes the following claims for relief: (1) violation of 42 U.S.C. § 1983, free speech on matters of public concern and due process; (2) violation of 42 U.S.C. § 1983, right to a trial by jury; (3) violation of 42 U.S.C. § 1983, equal protection of the law; (4) violation of 42 U.S.C. § 1986, equal protection of the law; (5) violation of 42 U.S.C. § 1981,

¹ The remaining defendant, Michael Trucco, is outside counsel for the University of Illinois and is represented by his own counsel, who will be filing a separate motion to dismiss.

equal protection of the law; (6) equitable and other relief for continuing damages arising out of due process and equal protection violations; (7) intentional infliction of emotional distress; (8) abuse of process; and (9) libel.

2. As set forth in the U of I Defendants' Memorandum in Support, Abcarian's federal and state claims against the Board are barred by Eleventh Amendment. Accordingly, those claims should be dismissed without prejudice.

3. Abcarian's federal claims against the Individual U of I Defendants fail to state a claim upon which relief can be granted. Accordingly, those claims should be dismissed with prejudice.

4. Abcarian's remaining state law claims against the Individual U of I Defendants should be dismissed without prejudice. Assuming this Court concludes that Abcarian's federal claims are subject to dismissal, this Court should decline to exercise supplemental jurisdiction over Abcarian's state law claims. In cases where all federal claims are dismissed before trial, the general practice in the Seventh Circuit is to decline to exercise supplemental jurisdiction over the state law claims.

WHEREFORE, the U of I Defendants respectfully request that this Court dismiss without prejudice the federal and state claims against the Board of Trustees, dismiss with prejudice the federal claims against the Individual U of I Defendants, and decline to exercise supplemental jurisdiction over and dismiss without prejudice Abcarian's state law claims against the Individual U of I Defendants.

Dated: September 5, 2008

Respectfully submitted,

**Defendants Timothy McDonald, M.D., J.D.,
Patricia Kale, William H. Chamberlin, Jr.,
M.D., Nikki Centomani, Stuart Allen,
Barbara McColgin, Chris J. Mollet, Esq.,
Thomas R. Bearrows, Esq., Christine
Flaningam, and the Board of Trustees of the
University of Illinois**

By: s/ William D. Heinz
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